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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92046880
Party	Defendant HARDEE'S FOOD SYSTEMS, INC.
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Submission	Opposition/Response to Motion
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Attachments	Response to Motion to Extend Discovery.pdf (5 pages)(19063 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re the matter of Trademark Reg. Nos. 1,776,896 and 1,832,980
For the Marks: BURGER CHEF and BURGER CHEF (and Design)
Dates Filed: October 9, 1992 and October 13, 1992
Dates Registered: June 15, 1993 and April 26, 1994

Attorney Docket No. 60062.1281

River West Brands, LLC,)	
)	
Petitioner,)	
)	Cancellation No.: 92046880
)	
Hardee's Food Systems, Inc.,)	
)	
Respondent.)	

HARDEE'S FOOD SYSTEMS, INC.'S RESPONSE IN OPPOSITION TO RIVER WEST
BRANDS LLC'S MOTION TO EXTEND DISCOVERY

Respondent Hardee's Food Systems, Inc. ("Hardee's") hereby opposes and responds to
Petitioner River West Brands, LLC's ("River West") Motion to Extend Discovery as follows:

Background

River West has petitioned to cancel Hardee's Registrations for the marks BURGER
CHEF (Reg. No. 1,776,896) and BURGER CHEF and Design (Reg. No. 1,832,980).

The Board's Scheduling Order scheduled discovery to close on August 4, 2007.
Hardee's subsequently consented to River West's first request to extend the discovery period for
sixty (60) days under the mistaken belief that River West had a genuine interest in reaching an

amicable resolution to the proceeding. The Board granted River West's consented request and the discovery period was extended until October 3, 2006.

While Hardee's acknowledges that the parties had discussed the possibility of a resolution of the proceeding, River West's statement of the facts regarding the discussions is incomplete. As River West notes in its motion, it initiated settlement discussions by requesting a meeting with Hardee's. (River West Motion ¶ 4). However, Hardee's twice insisted that River West provide a written proposal regarding the topics of discussion prior to such meeting, once in July 2007 and again in August 2007 after River West indicated that it preferred to meet prior to providing anything in writing. Instead of complying with Hardee's reasonable request for a written proposal prior to setting up a meeting of the parties, River West repeatedly ignored the request. Hardee's did not hear from River West again until a few days prior to the close of discovery, namely September 28, 2007, when River West again requested that the parties meet without first providing Hardee's with a written proposal. At that time, River West also requested a further extension of the discovery period. Hardee's responded on October 2, 2007, advising (for a third time) that it would not agree to a meeting with River West without a written proposal and denying River West's request that it consent to a further extension of discovery. It is apparent that River West was not sincere in expressing an interest in settlement. Rather, River West's actions appear merely designed to delay the proceeding.

River West Has Not Shown Good Cause to Extend the Discovery Period

The TBMP warns of the need for “early initiation of discovery”. TBMP § 403.05. In this instance, River West has not shown the requisite good cause necessary to receive an extension of the discovery period. River West’s allegation that it “will be greatly prejudiced if it cannot conduct proper discovery” is disingenuous. (River West Motion ¶13) River West had ample time to serve discovery requests and notice depositions. Indeed, counting the sixty (60) day extension of time that Hardee’s had already consented to, River West had approximately eight (8) months to conduct discovery, including depositions. It chose not to do so until serving a set of interrogatories, document requests and requests to admit on October 3, 2007, the last day of discovery. If River West needed to engage in follow up discovery and take depositions as it claims, it should have acted earlier in the discovery period. See TBMP § 403.05.

River West’s claim that “any earlier actions by River West seeking discovery would have been detrimental to the parties’ amicable settlement discussions” (River West Motion ¶ 12) is not consistent with common practice. Litigants often simultaneously engage in discovery and settlement discussions. Further, any expectation that River West may have had that Hardee’s was going to consent to a second extension of the discovery period when River West was poised to again deny Hardee’s request for a written proposal was unreasonable.

Rewarding River West with a further extension of the discovery period under the current circumstances would be unfair to Hardee's and inconsistent with the spirit of the Trademark Rules of Practice and the procedures set forth in the TBMP.

Conclusion

River West's settlement overtures were empty, insincere and designed merely to delay the proceeding. It has had ample time to engage in discovery in this proceeding and has served substantial interrogatories, document requests and requests to admit. For the reasons set forth herein, Hardee's respectfully requests that the Board deny River West's Motion to Extend Discovery.

Respectfully submitted,
HARDEE'S FOOD SYSTEMS, INC.

Dated: October 23, 2007

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of October 2007, a copy of the foregoing RESPONDENT HARDEE'S FOOD SYSTEMS, INC'S RESPONSE IN OPPOSITION to RIVER WEST BRANDS, LLC'S MOTION TO EXTEND DISCOVERY was served upon counsel for Petitioner by first-class mail, postage pre-paid in an envelope addressed as follows:

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